

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

DERRICK IRVING,

Defendant.

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ALVIN K. HELLERSTEIN, U.S.D.J.:

ORDER AFFIRMING SENTENCE

00 Cr. 678 (AKH)

I have received defense counsel's sentencing memorandum of April 2, 2007, asking me to re-sentence defendant Derrick Irving in light of United States v. Booker, 543 U.S. 220 (2005) and United States v. Crosby, 397 F.3d 103 (2d Cir. 2005). After review, and after consideration of all the relevant sentencing factors, including those set out in 18 U.S.C. § 3553(a), I hold that the sentence, as originally pronounced on January 22, 2003, and recorded in the judgment dated and filed March 28, 2003, reflects just punishment and will not be changed or modified.

My finding at the Fatico hearing, held prior to sentencing Derrick Irving, that defendant was "an organizer or leader" of an extensive marijuana distribution activity "that involved five or more participants," see United States Sentencing Guidelines § 3B1.1(a), reflects my judgment now just as much as it did then. Mr. Irving kept the books, instructed his brother, cousins, and friend in effective distribution, and attended to the problems of maintenance of active and continuous supply. The tapes that recorded his conversations, and the entries in the books he kept, left no doubt. As counsel observes, Derrick Irving was "a take charge kind of person" and the four-point enhancement substantially affected the punishment, in just the manner that Section 3553 provides. I see no reason to change that ruling.

As for the other considerations noted by counsel—Derrick Irving’s honorable military service and his regard for parents and family—I noted these also. I never said that Derrick Irving was a bad person. Like many others involved in criminal activities, he had many admirable traits. But he committed a serious crime and, in my opinion and under law set by Congress, he deserves the serious punishment that he received.

SO ORDERED.

Dated: April 18, 2007
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge